wills are required to be executed, though it made no devise or bequest, was nevertheless testamentary in character, might be admitted to probate, and so did work a revocation of the will. The only difference between this case and *In re McGill's Will,* if difference there be, is found in the addition in the Massachusetts case of the words, "it is my wish that my estate be settled according to law." The language of Margaret McGill's note at least suggests the possibility that she intended a revocation only so far as her will was "made in favor of Thomas Hart." There were other provisions in her will, and why is the note then not testamentary? Compare *In the Goods of Durance,* L. R. 2, P. and D. 406; *In the Goods of Hay,* L. R. 1 P. and D. 53, and *In the Goods of Hicks,* 1 *ib.* 683. On the whole subject see the annotation in 3 A. L. R. 836, to the case of *Dowling* v. *Gilliland,* 286 Ill. 530. No doubt the courts do well to insist rigidly upon written wills and revocations. Parol evidence in the case of wills is dangerous, for the opportunity and temptation to perjury and fraud are great. As said by Ld. Ch. Talbot in *Brown v. Selwin,* Cas. temp. Talbot 240, and by many another judge in dealing with wills, "It is better to suffer a particular mischief than a general inconvenience." But one may well question whether the narrow interpretation of instruments executed with all the formalities required by the statute does not needlessly inflict a particular mischief where there could be no general inconvenience and make a statute intended to prevent fraud into an instrument of fraud. It would be no great strain to construe the note of Margaret McGill, executed as the law requires for a will, as indicating an intention to revoke the will at once without waiting for the destruction of the will by Dr. O'Kennedy. How can parol evidence that she so intended it, and was happy in the thought that she had accomplished her purpose, in any way defeat the purpose of the statutory requirement as to revocation of wills?

E. C. G.

NEBULOUS INJUNCTIONS.—Injunctive relief is sought against alleged wrongdoing which is merely incidental to the conduct of a legitimate business. The wrong is established and the court is satisfied that an injunction should issue. Yet some nice questions remain as to the scope and terms of the decree.

The restraint should not go farther than is necessary to protect the complainant's rights. The business should not be needlessly destroyed or embarassed. If the defendant has asserted that it is impossible to conduct the business without the incidents complained of, (as he is likely to do in nuisance cases, with a view to securing a holding that there is no nuisance or that, though there be a legal nuisance, the balance of convenience forbids an injunction) strict logic might require that this be taken as a conclusive admission when it comes to settling the terms of the decree. In view, however, of the fact that "impossibility" is, in these cases, relative, and in view of the public interest involved, it is good sense, if not good logic, to give the defendant an opportunity to do what he has asserted is impossible, if there appears to be the slightest chance of success, and such seems to be the

practice. *Chamberlain* v. *Douglas,* 24 N. Y. App. Div. 582; *Anderson* v. *American Smelting Co.,* 265 Fed. 928.

At the same time, it will not do merely to enjoin the defendant from conducting his business as he has in the past, for he could fulfill this decree by varying some detail which would not at all remove the objectionable features. The court must, if possible, reach all wrongful practices of the sort complained of, must throw the defendant back within the lines of his legal privileges.

In cases where the circumstances are such that the rights of the parties can be defined in exact terms, this principle is easy to apply. Thus where defendant, who had no right to flow plaintiff's land, erected a dam which flowed the land to a depth of 15 inches, the decree ordered defendant to lower the dam fifteen inches. *Rothery* v. *N. Y. Rubber Co.,* 90 N. Y. 30. But in cases of nuisance and of unfair competition, it constantly happens that, although the court is convinced that defendant has gone beyond his privileges and has invaded the complainant's rights, it is impossible to define these rights and privileges in terms that are at all definite. In this situation, it has been a common practice to pass the difficulty to the defendant by a decree which is little more than an order to cease committing nuisances, or to cease unfair competition. In *Winchell* v. *Waukeshaw,* 110 Wis. 101, the decree restrained discharge of sewage into a river "unless same shall have first been so deodorized and purified as not to contain foul, offensive or noxious matter capable of injuring plaintiff or her property or causing a nuisance thereto." In *Northwood* v. *Barber Asphalt Co.,* 126 Mich. 284, the defendant was punished for violation of a decree enjoining the emission of fumes "in such quantities as to materially injure the health of plaintiffs or in any way interfere with the comfortable enjoyment of their homes." In *Collins* v. *Wayne Iron Works, 227* Pa. 326, the decree of the lower court restrained the operation of power hammers, etc., "so as to render the premises of the plaintiff unfit for use and enjoyment as a residence by a reasonable and normal person." The fault in these decrees is obvious. As was said in the last case, in modifying the decree, "The entry of an injunction is in some respects analogous to the publication of a penal statute; it is notice that certain things must be done or not done, under a penalty to be fixed by the court. Such a decree should be as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it; and when practicable it should plainly indicate to the defendant all of the acts which he is restrained from doing, without calling upon him for inferences or conclusions about which persons may well differ." See also, *Ballantine* v. *Webb,* 84 Mich. 38.

In *Laurie* v. *Laurie,* 9 Paige 234, the Chancellor denied a motion for attachment for violation of a somewhat similar injunction, saying, "As defendant is bound to obey the process of the court at his peril, the language of the injunction should be so clear and explicit that an unlearned man can understand its meaning without the necessity of employing counsel to advise him." This is perhaps an unattainable standard, but a wholesome one to aim at. Of course it is not likely that any court would impose any serious

punishment upon a party who attempted in good faith to observe a decree, although it found that he had done so. Good faith is well recognized as a circumstance mitigating contempt. 22 CYC. 1026. See *Northwest* v. *Barber Asphalt Co,. supra.* But no one would contend that this cures the ill. To enter an obscure decree and invite the defendant to throw himself upon the clemency of the court, is neither fair to the defendant nor to the complainant, nor is it a dignified way to administer justice. We do, however, in the unfair trade cases, find some courts taking the extraordinary position that uncertainty in the decree is of positive merit. In *Charles E. Hires Co.* v. *Consumers Co.,* 100 Fed. 809, 813, the Circuit Court of Appeals, Seventh Circuit, said, "(The court) is not called upon to decide whether a new label proposed for adoption would infringe."

"This is especially so here, where the infringement was deliberate and designed. In such case the court ought not to say how near the infringer may lawfully approximate the label of the complainant, but should place the burden upon the guilty party of deciding for himself how near he may with safety drive to the edge of the precipice, and whether it be not better for him to keep as far from it as possible." A decree was ordered enjoining defendant from using labels or bottles "calculated to deceive purchasers," etc. It has been sought to support this view with the familiar maxim that equity will not aid a wrongdoer (*Oneida Community* v. *Oneida Trap Co.,* 168 N. Y. App. Div. 769), but this is inappropriate as applied to a defendant who is not seeking affirmative relief but merely asking that the decree against him be made certain. If this position has any justification, it lies in the circumstance that in cases of this type the defendant has no "equity" to hew close to the line, and if he does not insist upon hewing close will have no difficulty in avoiding a contempt. Even in this type of cases, the practice is not uniform. *Coca Cola* v. *Gay Ola Co.,* 211 Fed. 942. And see NIMS, UNFAIR COMPETITION, § 367, ff. It would seem that, although the defendant may have no equity to ask the court to aid to "drive to the edge of the precipice," it is sound and convenient practice to give the defendant an opportunity to submit a proposed remedy which, if it is approved by complainant or is clearly within the defendant's rights, should be approved (that is to say, excepted from the general terms of the decree). When we turn from this type of case to cases of nuisance, incident to the prosecution of a legitimate business and difficult to eliminate without heavy expense and even jeopardy to the business, probably no one would question that the defendant has an "equity" to hew to the line, and is well entitled if not to a decree clearly marking out that line, at least to one which will not drive him "as far from it as possible."

How can the court best meet these demands? That depends very much upon the circumstances of each case, and no general rule seems possible. It may, however, be worth while to note some of the expedients which have been used. In the unfair trade cases, the courts have frequently given the defendant an opportunity to submit for its approval a scheme of reform, a new label, a new package, a new name, a new method. NIMS, UNFAIR COMPETITION, S 367. If the defendant "drives to the edge of the precipice," the court may well say that it is not prepared, at that stage of the case, to decide

the point, and that the defendant, if he wishes the stamp of approval, must withdraw to clearer ground. Cases where the defendant has an equity to hew to the line are not so easy to deal with. In some cases the best expedient will be what we might call an experimental decree. In *Collins* v. *Wayne Iron Works, supra,* the court modified the decree so that it enjoined operations between certain hours of the night, or at any other time save behind closed doors and windows, saying "At least such a measure of relief should be tried first." In *Babcock* v. *New Jersey Stockyard Co.,* 20 N. J. Eq. 296, there is a very interesting decree with three branches, one of which was a prohibition of the keeping of live hogs on the premises for more than three hours, reserving to the plaintiff the right to apply for a modification of the time, "which is adopted merely on conjecture." In other cases, although a nuisance is proved, it may be best to postpone relief till further information is gained in regard to means of improvement. This was done in another branch of the decree last mentioned, the point being referred to a commissioner, with leave to either party to move for action upon his report. In other cases it may be best to postpone relief while the defendant experiments with remedial measures. This was done in *Shelfer* v. *London Electric Co.,* [1895] 2 Ch. 388, and in *Anderson* v. *American Smelting Co., supra.* Of course, if the balance of convenience runs the other way, it might be more equitable to render immediately a decree which would be certain to give relief, with leave to the defendant to apply for a modification upon a showing that there is another adequate and less onerous remedy. This was done in *Chamberlain* v. *Douglas, supra,* and in *Galbraith* v. *Oliver,* 3 Pittsburgh 78. These and probably other expedients are available. Equity boasts of the flexibility of its remedies. And if this phase of injunctive relief is given proper attention it would seem that we might wholly eliminate those decrees which give the defendant "no rule of conduct which the law had not before prescribed" (*Ballantine* v. *Webb, supra*), yet rumble the thunder of attachment. E. N. D.

DECLARATORY JUDGMENTS.—That statutes designed to further the cause of social justice should have to stand the test of constitutionality is inevitable under our system. It is, however, unfortunate that judges generally speaking are strongly disposed to "view with alarm" any such statutes that depart in any marked degree from the beaten path. Unquestionably there is something about legal training and experience in law, particularly upon the bench, that tends to extreme conservatism. That our judges should be reasonably conservative in order that our fundamental liberties may be preserved and the law kept steady, though progressive, through passing waves of popular desire and prejudice no sensible man can deny. But there is a big difference between such healthy conservatism and distrust of new things simply because they are new. "I have known judges," said Chief Justice Erle, "bred in the world of legal studies, who delighted in nothing so much as in a strong decision. Now a strong decision is a decision opposed to common-sense and to common convenience." SENIOR, CONVERSATIONS WITH DISTINGUISHED PERSONS [Ed. of 1880] 314. Such a decision was that of the New York court